

**Exhibit B**

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The Honorable Allen Nielson  
Hearing Date: April 27, 2012  
Hearing Time: 10:00 a.m.  
Ferry County

8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
9 FOR THE COUNTY OF FERRY

10 JOSEPH A. CONNOR, III, ) Case No. 11-2-00098-6  
11 Plaintiff, ) DEFENDANTS' MOTION FOR  
12 v. ) SANCTIONS RE PLAINTIFF'S MOTION  
13 GMAC MORTGAGE, LLC, et. al. ) FOR PLACEMENT OF *LIS PENDENS*  
14 Defendants. ) (ORAL ARGUMENT REQUESTED)

15  
16 Plaintiff filed an erroneous motion for the placement of *lis pendens* on real  
17 property located in Malo, Washington. Despite Defendants' request, plaintiff has  
18 refused to withdraw the motion. Plaintiff should be sanctioned under CR 11 for filing  
19 and failing to withdraw the motion because (1) the court does not have authority to  
20 authorize the placement of a *lis pendens*; (2) plaintiff has no claim to any interest in, or  
21 ownership of, the subject real property, and plaintiff's Second Amended Complaint does  
22 not raise any claim regarding the title to the property; and (3) defendants' counsel  
23 informed plaintiff, in writing, of items 1 and 2, both before and after plaintiff filed his  
24 motion, which plaintiff has ignored.

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1       **A. BACKGROUND**

2              Defendants incorporate by reference the Background set forth in their Response  
3              to plaintiff's Motion to Allow Placement of *Lis Pendens*.

4       **B. STATEMENT OF ISSUES**

5              Issue No. 1: Should plaintiff be sanctioned for pursuing his motion for the  
6              placement of a *lis pendens*?

7              Answer: Yes, plaintiff's *lis pendens* motion violates CR 11 because:

8              (a) the court lacks authority to allow the filing of a *lis pendens*. See  
9              RCW 4.28.320;

10             (b) plaintiff's action is for an alleged breach of the settlement agreement and  
11             does not involve any claim affecting the title to real property. Plaintiff does not and  
12             cannot claim an ownership interest in the property;

13             (c) defendants advised plaintiff of the issues with his pursuit of a *lis pendens*,  
14             which plaintiff has ignored.

15       **C. EVIDENCE RELIED ON**

16              Plaintiff's Amended Complaint and the exhibits attached thereto, Defendants'  
17              Response to Plaintiff's Motion for Placement of *Lis Pendens*, and the Declaration of  
18              William G. Fig ("Fig Decl.") filed in support of Defendants' Response to Plaintiff's Motion  
19              for Placement of *Lis Pendens* (and in support of this motion) and the Exhibits thereto.

20       **D. LEGAL AUTHORITY**

21              CR 11(a) provides, in relevant part, that, by signing a pleading, the party  
22              represents and certifies that " \* \* \* (1) it is well grounded in fact; (2) is warranted by  
23              existing law or a good faith argument for the extension, modification, or reversal of  
24              existing law or the establishment of new law; (3) it is not interposed for any improper  
25              purpose, such as to harass or to cause unnecessary delay or needless increase in the  
26              cost of litigation \* \* \*.

1 CR 11(a) further provides that an “appropriate sanction, which may include an  
2 order to pay to the other party or parties the amount of the reasonable expenses  
3 incurred because of the filing of the pleading, motion, or legal memorandum, including a  
4 reasonable attorney fee.”

5 RCW 4.28.320, which provides in relevant part: “At any time after an action  
6 **affecting title to real property** has been commenced, or after a writ of attachment with  
7 respect to real property has been issued in an action, or after a receiver has been  
8 appointed with respect to any real property, the plaintiff, the defendant, or such a  
9 receiver may file with the auditor of each county in which the property is situated a  
10 notice of the pendency of the action . . .” Emphasis added.

11 **E. DISCUSSION**

12 Plaintiff transferred the subject property to GMAC Mortgage, LLC and clearly and  
13 unequivocally released and discharged Defendants and any claim regarding or relating  
14 to the subject property, including the ownership thereof and defendants’ authority to act  
15 relating thereto. Fig Decl., ¶ 3, Exhibit 1, and ¶ 6, Exhibit 4.

16 The court does not have authority to approve or allow the placement of a *lis*  
17 *pendens*. Moreover, plaintiff’s action has nothing to do with the ownership of the  
18 subject property or whether plaintiff still has any interest in the property. Thus, plaintiff’s  
19 Complaint does not “affect the title” to any real property.” RCW 4.28.320.

20 Perhaps, most importantly, defendants advised plaintiff on multiple occasions  
21 that the filing of a *lis pendens* against the real property was improper in this case. Fig  
22 Decl., ¶¶ 4 and 5, Exhibits 2 and 3. Defendants first raised the impropriety of a *lis*  
23 *pendens* in March 2012. Fig Decl., ¶ 4, Exhibit 2. This advice was largely ignored, and  
24 plaintiff filed this motion. Prior to defendants filing this Motion and their Response to  
25 plaintiff’s motion, defendants’ counsel again explained to plaintiff, in writing, why his *lis* /  
26 //

1 *pendens* Motion was improper and requested that plaintiff withdraw his Motion. Fig  
2 Decl., ¶ 5, Exhibit 3. Plaintiff refused to withdraw his motion.

3 Rather than address the legal issues raised by counsel regarding the *lis*  
4 *pendens*, plaintiff chose to respond to counsel's emails on the issue by commenting on  
5 counsel's proofreading skills and questioning counsel's academic credentials and  
6 choice of law school.<sup>1</sup> See Fig Decl., ¶¶ 4 and 5, Exhibits 2 and 3.

7 Plaintiff's *lis pendens* Motion is not well-grounded in fact, nor is it warranted by  
8 existing law, a good faith argument for the extension, modification, or reversal of  
9 existing law, or the establishment of new law. Plaintiff was twice informed of this, yet he  
10 has pursued the *lis pendens*. Plaintiff should be sanctioned in the amount of \$1,500.00  
11 to compensate defendants for their costs and fees incurred in dealing with plaintiff's  
12 erroneous and improper *lis pendens* motion.

13 **CONCLUSION**

14 Based on the above, plaintiff's *lis pendens* Motion is neither well-grounded in  
15 fact, nor is it warranted by existing law or a good faith argument for the extension,  
16 modification, or reversal of existing law, or the establishment of new law. Defendants  
17 respectfully request that the court grant their Motion and sanction plaintiff in the amount  
18 of \$1,500.00.

19 Dated this 19th day of April, 2012.

20 SUSSMAN SHANK LLP

21  
22 By \_\_\_\_\_  
23 William G. Fig, WSBA 33943  
billf@sussmanshank.com  
24 Attorneys for Defendants

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26 <sup>1</sup> Defendants' counsel concedes he did not receive all As (or even all Bs). He defers to the administration of his alma matter whether his law school is "important."

**CERTIFICATE OF SERVICE**

THE UNDERSIGNED certifies:

1. My name is Karen D. Muir. I am a citizen of Washington County, state of Oregon, over the age of eighteen (18) years and not a party to this action.

2. On April 19, 2012, I caused to be delivered via **first-class U.S. Mail**,

**postage prepaid, and email a copy of: DEFENDANTS' MOTION FOR SANCTIONS  
RE PLAINTIFF'S MOTION FOR PLACEMENT OF *LIS PENDENS* MOTION to the  
interested parties of record, addressed as follows:**

Joseph A. Connor III  
PO Box 1474  
Cobb, CA 95426  
Email: jaconnor3@netzero.net

I SWEAR UNDER PENALTY OF PERJURY that the foregoing is true and correct to the best of my knowledge, information, and belief.

Karen D. Muir, Legal Assistant

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The Honorable Allen Nielson  
Hearing Date: April 27, 2012  
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Ferry County

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF FERRY

JOSEPH A. CONNOR, III, ) Case No. 11-2-00098-6  
Plaintiff, ) DEFENDANTS' RESPONSE TO  
v. ) PLAINTIFF'S MOTION TO ALLOW  
GMAC MORTGAGE, LLC, et. al. ) PLACEMENT (sic) OF *LIS PENDENS*  
Defendants. ) (ORAL ARGUMENT REQUESTED)

Defendants object to plaintiff's Motion to Allow Placement (sic) of *Lis Pendens* based on the grounds that (1) the court does not have authority to authorize the placement of *lis pendens* and (2) plaintiff has no claim to any interest in, or ownership of, the subject real property, and plaintiff's Second Amended Complaint does not raise any claim regarding the title to the property.

A. BACKGROUND

In December of 2010, plaintiff filed a *pro se* complaint against defendants arising out a non-judicial foreclosure of a trust deed against property he owned in Malo, Washington (the "2010 Action"). Plaintiff's Amended Complaint, Recitals ¶ 1. In or about May of 2011, the parties settled the 2010 Action. Plaintiff's Amended Complaint,

1 Recitals ¶ 2. A copy of the settlement agreement signed by the parties is attached as  
2 Exhibit 3 to plaintiff's Amended Complaint in this matter (the "Agreement").<sup>1</sup>

3 Under paragraph 1 of the Agreement, plaintiff agreed to transfer the property to  
4 defendant GMAC Mortgage, LLC. The transfer was to be accomplished via a statutory  
5 warranty deed. See Exhibit 1 to Plaintiff's Amended Complaint. Plaintiff executed the  
6 Statutory Warranty Deed concurrently with the execution of the Agreement, which was  
7 recorded in the real property records of Ferry County. A copy of the recorded deed is  
8 attached to the Declaration of William G. Fig as Exhibit 1.

9 Under paragraph 2 of the Agreement, plaintiff agreed to vacate the property,  
10 which he did. The property has since been sold to a third party.

11 Paragraph 3 of the Agreement specifically identifies the defendants in the 2010  
12 action. They are the same as the defendants in this action. Under paragraph 7 of the  
13 Agreement, plaintiff released and discharged the defendants from:

14 1. "any and all claims that were or could have been asserted in the Lawsuit."  
15 Agreement, ¶ 7(f); and

16 2. "any and all claims relating to, concerning, or (sic) the underlying the  
17 Loan, or the Loan transaction, or the servicing or administration of the Loan."  
18 Agreement, ¶ 7(g).

19 The Agreement "discharge[d] all claims that [plaintiff] have against the  
20 [defendants] up until and including the date of the execution of this Agreement."  
21 Agreement, ¶ 7. p. 4. Thus, the Agreement clearly included any claims regarding the  
22 ownership of plaintiff's loan relating to the real property located in Malo, Washington,  
23 and any actions by any of the 2010 defendants to foreclose that loan. See Agreement,  
24 ¶¶ 1 and 3. No loan-related claims could exist after the date of the Agreement because,  
25 as part of the Agreement, plaintiff transferred the Malo, Washington property to

26 \_\_\_\_\_  
<sup>1</sup> A copy of the signed settlement agreement, identical to Exhibit 3, is attached as Exhibit 4 to the Declaration of William G. Fig.

1 defendant GMAC Mortgage, LLC. Plaintiff's Amended Complaint, Recitals ¶ 4; see also  
2 Agreement, ¶ 1.

3 Nonetheless, in October of 2011, plaintiff filed this action against the same  
4 defendants that were named in the 2010 Action. Plaintiff's Second Claim for Relief  
5 against defendants relates to the ownership of the same loan regarding the Malo,  
6 Washington property and defendants' "standing"/"authority" to record documents  
7 relating to the same non-judicial foreclosure of this property. These were the exact  
8 subjects of the 2010 Action. See Agreement, ¶¶ 1 and 3.

9 Plaintiff now seeks the court's permission to file a *lis pendens* against the Malo,  
10 Washington property because of the aforementioned purported concerns raised in his  
11 barred Second Claim for Relief.

12 **B. STATEMENT OF ISSUES**

13 Issue No. 1: Does the court have authority to approve the placement of a *lis*  
14 *pendens*?

15 Answer: No, the court only has statutory authority to cancel or terminate a *lis*  
16 *pendens.* See RCW 4.28.320.

17 Issue No. 2: Even if the court had such authority, is a *lis pendens* proper in this  
18 case?

19 Answer: No, plaintiff's action is for an alleged breach of the settlement  
20 agreement and does not involve any claim affecting the title to real property. Plaintiff  
21 transferred the subject property to GMAC Mortgage, LLC and released and discharged  
22 any claims against defendants relating to the property. Plaintiff does not and cannot  
23 claim an ownership interest in the property.

24     ///

25     ///

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1       **C. EVIDENCE RELIED ON**

2              Plaintiff's Amended Complaint and the exhibits attached thereto and the  
3              Declaration of William G. Fig filed in support of Defendants' Response and the exhibits  
4              thereto.

5       **D. LEGAL AUTHORITY**

6              RCW 4.28.320, which provides in relevant part: "At any time after an action  
7              **affecting title to real property** has been commenced, or after a writ of attachment with  
8              respect to real property has been issued in an action, or after a receiver has been  
9              appointed with respect to any real property, the plaintiff, the defendant, or such a  
10             receiver may file with the auditor of each county in which the property is situated a  
11             notice of the pendency of the action . . ." Emphasis added.

12      **E. DISCUSSION**

13              In exchange for the settlement payment, plaintiff transferred the subject property  
14              to GMAC Mortgage, LLC and clearly and unequivocally released and discharged  
15              Defendants regarding "any and all claims that were or could have been asserted in the  
16              Lawsuit" and "any and all claims relating to, concerning, or (sic) the underlying the Loan,  
17              or the Loan transaction, or the servicing or administration of the Loan." Agreement,  
18              ¶ 7(f) and (g). This necessarily includes any claims by plaintiff regarding or relating to  
19              ownership of the subject property or defendants' authority to act relating thereto.

20              The court does not have authority to approve or allow the placement of a *lis*  
21              *pendens*. Moreover, plaintiff's action is for an alleged breach of a settlement agreement  
22              and whether defendants properly and/or timely recorded a reconveyance of plaintiff's  
23              deed of trust.<sup>2</sup> This has nothing to do with plaintiff's ownership of the property or  
24              whether plaintiff still has any interest in the property. Thus, plaintiff's Complaint **does**  
25

26      <sup>2</sup> Plaintiff's argument regarding First American Title Company ("FATCO") is another irrelevant red herring. FATCO has an office located at 818 Stewart Street, Suite 800, Seattle, WA 98101

1    not “affect the title” to any real property.” RCW 4.28.320. As a result, the filing of a  
2    *lis pendens* against the real property is improper.

## **CONCLUSION**

4 Based on the above, defendants respectfully request that the court deny  
5 plaintiff's motion.

Dated this 19<sup>th</sup> day of April, 2012.

SUSSMAN SHANK LLP

By William G. Fig, WSBA 33943  
[billf@sussmanshank.com](mailto:billf@sussmanshank.com)  
Attorneys for Defendants

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**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION  
TO ALLOW PLACEMENT (sic) OF *LIS PENDENS* - Page 5**

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TELEPHONE (503) 227-1111  
FACSIMILE (503) 248-0130

## CERTIFICATE OF SERVICE

THE UNDERSIGNED certifies:

1. My name is Karen D. Muir. I am a citizen of Washington County, state of Oregon, over the age of eighteen (18) years and not a party to this action.

2. On April 19, 2012, I caused to be delivered via **first-class U.S. Mail, postage prepaid, and email** a copy of: **DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO ALLOW PLACEMENT (SIC) OF *LIS PENDENS*** to the interested parties of record, addressed as follows:

Joseph A. Connor III  
PO Box 1474  
Cobb, CA 95426  
Email: jaconnor3@netzero.net

I SWEAR UNDER PENALTY OF PERJURY that the foregoing is true and correct  
to the best of my knowledge, information, and belief.

Karen D. Muir, Legal Assistant

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